

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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OZAH Case No. WL 17-01
Prevailing Wage Law Appeal
Regarding Contract No. 0361400026-AA

The case arose under the “Prevailing Wage Requirements” of Montgomery County Code Section 11B-33C, and involves an appeal to the CAO of a determination by the Montgomery County Office of Procurement that Appellant Tompkins Builders, Inc., had violated the

Prevailing Wage Law provisions in carrying out Contract No. 0361400026-AA, for the Judicial Center Annex Renovation Project.

The matter was referred to the Office of Zoning and Administrative Hearings (OZAH) by memorandum from the Chief Administrative Officer (CAO) dated October 6, 2016. Exhibit 1. The CAO's memorandum designates OZAH as the Hearing Officer in the case and directs OZAH to conduct a hearing in accordance with Chapter 2A of the County Code and make a report and recommendation for the CAO's consideration.

On October 26, 2016, the Hearing Examiner issued a Scheduling and Procedures Order, which set up a scheduling conference, and suggested alternative schedules for the hearing and prehearing proceedings in this case. At the request of the parties, the scheduling conference was postponed until November 30, 2016, and it was held on that date. The conference was attended by Associate County Attorney Taggart Hutchinson, on behalf of Montgomery County, and by Eric A. Frechtel, Esquire, attorney for Tompkins Builders, Inc.

As a result of that conference, on December 6, 2016, the Hearing Examiner issued a revised scheduling order and notice of hearing (Exhibit 8). At the request of the parties, all the prehearing and hearing dates suggested in the Hearing Examiner's original Scheduling and Procedures Order were pushed back to allow time for negotiations between the parties.

As mentioned above, those negotiations proved fruitful, and on May 5, 2017, the parties signed a "Joint Stipulation of Dismissal," reciting that they had "reached a negotiated agreement to resolve the above-captioned Appeal" and noting that "This Appeal accordingly can be DISMISSED WITH PREJUDICE." Exhibit 10.

The enforcement provisions of the Prevailing Wage Law (Montgomery County Code §11B-33C (i) (7)) provide for the CAO to refer an appeal under the law to a Hearing Officer, who must review the case pursuant to the County's Administrative Procedures Act (MC-APA), which is in Chapter 2A of the County Code:

(7) A contractor may appeal a written decision of the Director that the contractor violated a provision of this Section to the Chief Administrative Officer within 10 working days after receiving a copy of the decision. The Chief Administrative Officer must designate a hearing officer to conduct a hearing under Chapter 2A upon receipt of a timely appeal. If the contractor does not appeal a written decision within 10 working days after receipt, the decision of the Director becomes final and binding.

Section 2A-10 (a) of the MC-APA provides in pertinent part that “any decision stipulated to or consented to by the parties need only be reflected by an appropriate written order or consent decree.” Section 2A-10 (g) of the MC-APA provides:

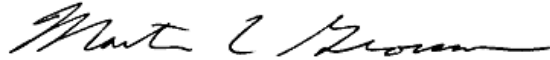
(g) Informal disposition. Where appropriate to the nature of the proceedings and the governing laws, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

The Hearing Examiner concludes that the parties' Joint Stipulation of Dismissal is an appropriate “informal disposition” of the case as provided in Section 2A-10(g), and as a result, there is no reason to conduct a formal hearing. Therefore, the Hearing Examiner accepts the parties' Joint Stipulation of Dismissal and all other previously filed documents into the administrative record and hereby closes the record.

Since the Hearing Examiner does not have the authority to issue a final decision on behalf of the CAO, the Hearing Examiner is returning this matter to the CAO with the recommendation that the CAO accept the parties' Joint Stipulation of Dismissal and dismiss this case with prejudice.

Dated: May 11, 2017

Respectfully submitted,



Martin L. Grossman
Hearing Examiner
Director, Office of Zoning and Administrative Hearings

Serve:

Eric A. Frechtel, Esquire
Attorney for Appellant
Taggart B. Hutchinson
Assistant County Attorney
Ramona Bell-Pearson
Assistant Chief Administrative Officer